

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Amendment of the Commission's Rules) WT Docket No. 95-157
Regarding a Plan for Sharing) RM-8643
the Costs of Microwave Relocation)

To: The Commission

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REPLY COMMENTS OF UTC

Pursuant to Section 1.415 of the Federal Communications Commission's (Commission) Rules, UTC, The Telecommunications Association (UTC), hereby submits its reply comments in response to the *Further Notice of Proposed Rule Making (FNPRM)* establishing a cost-sharing plan for microwave relocation costs. UTC notes that the majority of commenters join with UTC in opposing the proposed changes to the relocation framework for the C, D, E, or F Block licensees and support UTC's recommendation that incumbent microwave users be eligible to participate in the cost-sharing

I. The Commission Should Not Change the Basic Relocation Framework for Incumbents Affected by the C, D, E, or F Block Licenses

The majority of commenters oppose the Commission's proposal to change the time periods for voluntary and mandatory negotiations for the C, D, E and F Blocks. These commenters, incumbent and PCS licensees alike, note that there are no compelling reasons to modify the current rules and that the proposed changes may threaten incumbent operations.

Those filing in support of the proposed changes-- representing some, but not all, of the PCS community -- rehash the same arguments that have been rejected time and time again by the

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Commission and even by Congress. They claim that the changes will speed up the deployment of PCS and will prevent unjust enrichment by the incumbents. As Tenneco Energy (Tenneco) points out that there is no empirical evidence to support that the claim that the length of the voluntary period has affected the deployment of PCS.¹ The Association of American Railroads (AAR) correctly acknowledges that there has been no showing that the existing negotiation periods have been inadequate to promote relocation agreements between incumbents and PCS licensees, nor that the length of the current voluntary period has any relationship to the rapidity of negotiations.² Even one of the largest PCS licensees agrees that there is no need to revise the rules for the C, D, E or F Block licenses. PrimeCo Personal Communications, L.P. (PrimeCo) states that in making its proposal:

The *Notice* refers to no facts showing that the existing rules have failed in their purpose, and it makes no proposed findings that the existing rules have not achieved the goals of efficiency and fairness that the Commission claimed for them.³

In fact, the only empirical evidence regarding this matter was supplied by UTC, whose survey of incumbents demonstrated that even during the voluntary negotiation period, relocation agreements were being reached and negotiations were occurring.

UTC agrees with BellSouth Corporation (BellSouth) that the current rules have worked successfully. BellSouth has engaged in a number of negotiations "most of which have resulted in written agreements."⁴ BellSouth believes that the few unconcluded discussions will also reach mutually agreeable contracts. The Commission should take into account BellSouth's comments

¹ Tenneco Comments, p. 2.

² AAR Comments, p. 2.

³ PrimeCo Comments, p. 4.

⁴ BellSouth, p. 7.

regarding their relocation experience and avoid disrupting the carefully-crafted relocation rules which have brought about such success.

The American Petroleum Institutes (API) notes that the proposed modifications to the transition rules may actually frustrate PCS deployment by delaying negotiation. Noting that much of the existing incentive to negotiate earlier would be eliminated under a one-year voluntary period, "API hypothesizes that many incumbents would simply forgo negotiations during the one year voluntary period and wait until the mandatory period -- particularly since it is very difficult to reach an agreement within just one year."⁵ Tenecco agrees in its comments, stating that "[a]ny change in the negotiation period would likely delay relocation negotiations as both incumbents and PCS licensees would possibly interrupt the negotiations to reassess their bargaining positions."⁶ UTC also shares this concern and urges the Commission to consider this potential problem before changing the relocation rules.

UTC strongly disagrees with the statements by PCS licensees such as Omnipoint Communications which allege that changes to the relocation rules are necessary to protect the smaller D, E and F Block licensees. As BellSouth correctly points out, "the D, E, and F Block licensees will have few links to relocate because the A and B block licensees will have agreed to relocate a high percentage of the links and the C block licensees and UTAM most likely will contract for many of the relatively small number of links."⁷

⁵ API Comments, p. 6.

⁶ Tenecco Comments, pp. 3-4 (footnote omitted).

⁷ BellSouth Comments, p. 5.

UTC strongly objects to the statements by the Cellular Telecommunications Industry Association (CTIA) and other PCS licensees that changes to the relocation rules will not harm incumbents.⁸ The reality is that the proposed changes would harm many incumbents. As UTC noted in its comments, incumbents have relied on the existing rules in formulating relocation plans, and budgeting funds for engineering studies, staffing and other relocation costs.⁹ Other commenters agree. API notes that a one year voluntary period may provide insufficient time to resolve the "myriad issues involved with such a complex undertaking as systemic relocation."¹⁰ Based on its experience as a large 2 GHz system operator whose communications are vital to its operations, Williams Wireless Inc. (WW) notes that, "[i]n many instances, one year simply may not provide the parties with adequate time..."¹¹ Furthermore, PrimeCo notes that adopting another set of relocation rules for the C, D, E and F Block licensees will only increase the complexity of the rules and add to the cost of administering the cost-sharing plan.¹²

The same factors which argue against adopting the proposed changes to the relocation rules argue against the further changes that are proposed by some in the PCS community. Accordingly, UTC urges the Commission to reject the proposals to make further changes to the transition

⁸ CTIA Comments, p. 5. After making unsubstantiated statements regarding the lack of harm to incumbents, CTIA boldly asserts that "the only incumbents who will be hurt by a reduction of the voluntary period are a few "bad actors." CTIA seems to concede that some harm will arise, but that somehow (if by magic) harm will strike only those incumbents who are alleged to be "bad actors."

⁹ UTC Comments, p. 4. To better permit such planning by incumbents, UTC joins East River Electric Cooperative (East River) in recommending that the FCC encourage PCS licensees to notify incumbents of their estimated timetable for relocations. East River Comments, p. 8.

¹⁰ API Comments, p. 4.

¹¹ WW Comments, p. 14.

¹² PrimeCo Comments, p. 4.

framework by eliminating the voluntary negotiation period.¹³ The Commission correctly rejected this proposal in its *First Report and Order* by refusing to modify the basic transition framework, which it found to be "sound and equitable."¹⁴ The Commission did not even raise this issue in the *FNPRM*. Instead, recognizing the vital nature of many incumbent 2 GHz operations, the Commission proposed modifications to the rules which would retain the total minimal time for relocation negotiations. However, the PCS community, apparently unable to take "no" for an answer, has raised the issue of eliminating the voluntary period yet again. No new "evidence" is brought forward to explain the need for this change, nor is it proven that this change would speed up the deployment of PCS. Under the current rules, numerous parties have already entered into agreements to relocate even in the voluntary period. With the adoption of cost-sharing, even more agreements will likely be reached early in the process.

The PCS industry also mischaracterizes the impact that such a change would have on incumbents. For example, the Personal Communications Industry Association (PCIA) indicates that the voluntary negotiation period offers "no material protection" to incumbents.¹⁵ UTC strongly disagrees with this statement. The voluntary period provides incumbents with the opportunity to do engineering and operational studies prior to negotiations to determine what facilities are required and when the relocation can occur. Unlike the PCS licensees, which have teams of professional negotiators swarming the country, incumbents must set aside personnel and

¹³ UTC also strongly opposes the recommendations of Western Wireless Corporation (WWC) that the Commission take the opportunity in the middle of this narrowly-defined *FNPRM* to make other changes to the relocation rules. WWC Comments, pp. 2-4. These recommendation should be rejected by the Commission.

¹⁴ *NPRM*, WT Docket No. 95-157 ¶3.

¹⁵ PCIA Comments, p. 3.

other resources for this project while maintaining their "core" business. The voluntary period permits incumbents to make these resource allocations without disrupting their operations. The Commission must firmly reject the proposal to eliminate the voluntary negotiation period and close this issue *once and for all*.¹⁶

II. Incumbents Should be Permitted to Participate in the Cost-Sharing Plan

As explained in its comments on this matter, UTC fully supports the Commission's proposal to permit incumbents to participate in the cost-sharing mechanism. UTC noted that incumbent participation would promote the Commission's goals of facilitating PCS deployment and microwave relocation, and would pose no practical problems to administer.

Commenters from both sides agree. AT&T Wireless Services, Inc. believes that "adoption of the proposal .. to permit incumbent participation in the relocation cost-sharing plan would further [the Commission's stated] goals, with little risk of abuse."¹⁷ AT&T continues by noting that incumbent participation in the cost-sharing plan will likely speed clearance of the 2 GHz band, and enable incumbents to "redesign their systems on a comprehensive, rather than piecemeal basis" and to "minimize transaction costs associated with multiple partial negotiations with different PCS licensees at different times."¹⁸ Basin Electric Cooperative states notes that there is no reasonable justification to exclude incumbents from participation in the cost-sharing plan, and that such participation will reduce the administrative costs of new PCS licensees and

¹⁶ API agrees, urging the Commission to issue a strong statement in support of the current rules to stop the PCS community from continuing to raise this issue in contradiction of the proper scope of the proceeding. API Comments, p. 7.

¹⁷ AT&T Comments, p. 5.

¹⁸ AT&T Comments, p. 6.

the overall relocation costs.¹⁹ Williams Wireless, Inc. (WW) notes that "[p]articipation by incumbents in the cost-sharing plan will facilitate the prompt deployment of PCS and will preserve the rights of incumbents by placing the ultimate responsibility for relocation costs on the party that necessitates them."²⁰

In its comments, UTC noted that numerous characteristics of the relocation process mitigated against overcharging or "goldplating" by incumbents. In particular, UTC noted the inherent risk associated with self-relocation that the cost-sharing obligation may never arise, the close scrutiny by regulatory bodies of many incumbents' expenditures (especially utilities and pipelines) and the existing rules requiring cost support documentation and imposing caps on cost-sharing obligations.²¹ Numerous parties agree with UTC. AT&T, one of the largest PCS licensees, believes that the risk of abuse is limited and that the current rules, such as the cost-sharing cap and the dispute resolution procedures, should address any concerns.²²

To further address this concern, UTC suggested that the Commission adopt a rebuttable presumption that the relocation costs for self-relocated links be no higher than either the costs paid to relocate other links in the incumbent's system or the cost-sharing cap.²³ Santee Cooper agrees. In its comments, Santee noted that the prior agreements entered into by an incumbent

¹⁹ Basin Electric Cooperative(Basin) Comments, pp. 3-4. UTC also supports Basin's recommendation that all incumbents that have relocated since the beginning of the process (April 5, 1995) be eligible for cost-sharing. Basin Comments, p. 4. It is clear that the only reason for these relocations has been the emergence of PCS. Incumbents which have been forced out in advance of relocation agreements to secure channels, and for other operational reasons, must not be punished. They should be provided with the same opportunity as those incumbents who have waited.

²⁰ WW Comments, p. 9.

²¹ UTC Comments, pp. 7-8.

²² AT&T Comments, p. 6.

²³ UTC Comments, p. 8.

can serve as a benchmark for determining the appropriate costs of self-relocated links.²⁴ Santee Cooper also supports UTC's proposal to permit incumbents to demonstrate on a case-by-case basis why the benchmark should not apply to a particular link. Thus, if a PCS licensee avoids the relocation of high-cost links (a likely scenario), and pays only to relocate the less expensive links, an incumbent will not be limited by these costs in seeking cost-sharing for the relocation of the high-cost links.

Sprint Spectrum (Sprint) recommends that incumbents be required to submit an independent third party appraisal of the estimated relocation costs.²⁵ UTC opposes such a requirement as unnecessary and burdensome. The existing cost-sharing rules already require participants to maintain cost-support materials; these materials may be reviewed by the PCS licensees to determine whether their cost-sharing obligations are valid. The cost of the third party estimate may also serve as a disincentive for self-relocations and could thereby eliminate the benefits (outlined above) of this program. Furthermore, requiring third-party estimates for incumbents only is unfair. Incumbents should be treated identically to those PCS licensees who relocate paths outside their geographic boundaries or frequency bands. Because the Commission has found it reasonable not to impose a third party estimate requirement on these PCS licensees, it should not impose this requirement on incumbents.

PCIA notes that the discrepancy between the Proximity Threshold test used to determine cost-sharing obligations and the interference standard used to determine relocation obligations

²⁴ Santee Cooper Comments, p. 4.

²⁵ Sprint Comments, p. 5.

may result in some self-relocated incumbents being eligible for reimbursement when non-self-relocated incumbents would not.²⁶ UTC disagrees with PCIA's assumption that the use of the Proximity Threshold test will result in greater cost-sharing obligations than TIA Bulletin 10-F, the Commission's interference standard. The decision to exclude adjacent-channel interference from the determination of cost-sharing obligations under this test greatly limits its application and may actually result in obligations from fewer PCS licensees. Moreover, the Commission recognized in the *First Report and Order* that the Proximity Threshold test is not a perfect solution. The Commission did find, however, that the test's benefits "in terms of ease of administration outweigh any harm that use of the test will impose on later-entrant PCS licensees."²⁷ The Commission must be consistent in the application of this test and treat incumbents and PCS licensees alike.

Conclusion

UTC urges the Commission to refrain from adopting its proposed changes to the relocation framework which, according to incumbents and PCS licensees, is working effectively. UTC also urges the Commission to permit incumbent participation in the cost-sharing plan. Such participation would benefit both incumbents and PCS licensees by reducing overall relocation costs, facilitating the deployment of PCS and ensuring the reliability of incumbent systems.

²⁶ PCIA Comments, p. 8. See also Western Wireless Comments, p. 7.

²⁷ *First Report and Order*, Appendix A, ¶33.

WHEREFORE, THE PREMISES CONSIDERED, UTC requests the Federal Communications Commission to take action in accordance with the views expressed in these comments.

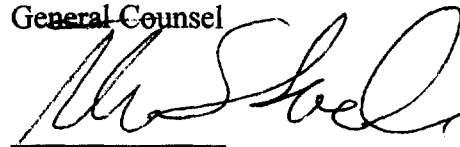
Respectfully submitted,

UTC

By:


Jeffrey L. Sheldon

~~General Counsel~~



Thomas E. Goode
Staff Attorney

UTC

1140 Connecticut Avenue, N.W.
Suite 1140
Washington, D.C. 20036

(202) 872-0030

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